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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Advanced Television Systems And Their Impact Upon the Existing Television Broadcast Service	))))))	MM Docket No. 87-268

REPLY OF MSTV TO COMMENTS
ON MSTV's PETITION FOR RECONSIDERATION

On June 22, 1992, MSTV filed a petition for partial reconsideration ("MSTV Petition") in this docket seeking revisions to the HDTV broadcast station application/ construction deadlines adopted in the Second Report and Order/Further Notice of Proposed Rulemaking, 7 FCC Rcd 3340 (1992) ("Second Report and Order"). The MSTV Petition requested specifically that the Commission return to its initial proposal to grant broadcasters three years to file their initial HDTV channel application from the later of the adoption of an HDTV standard or adoption of an HDTV Table of Allotments. MSTV also asked the Commission to refrain from establishing a fixed construction period at this juncture and to establish a date at some point in the relatively near future at which, with the benefit of substantially better market and production information, the Commission would fix an appropriate construction timetable or timetables. Petitions seeking similar relief were filed the same date by NAB and

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joint commenters Diversified Communications, Maine Radio and Television Company and Guy Gannett Publishing Company.

No oppositions to the three petitions have been filed. Comments supporting the petitions were filed by the Morgan Murphy Group, the Network Affiliated Stations Alliance, Gillett Holdings, Inc. and Freedom Newspapers. These commenters, who are either broadcast licensees or trade associations representing licensees in markets of all sizes, each confirmed the view of the petitioners that the application and construction periods adopted in the Second Report and Order are unrealistic and unfair and could well be counterproductive to accomplishing the Commission's objectives of promoting both the transition of the local broadcast system to an HDTV service and spectrum efficiency.

On July 17, 1992, MSTV filed in this docket an analysis of broadcast HDTV implementation costs, burdens and risks conducted by Larry F. Darby of Darby Associates (the "Darby Study"). As MSTV noted in submitting this filing, the Darby Study has relevance both to the broadcaster petitions for reconsideration cited above and many of the other issues upon which comment was sought in the Second Report and Order.

With respect to the MSTV Petition, the Darby Study provides powerful evidence both of the general risks of adopting rigid construction deadlines at this time and of the specific risks inherent in the three-to-five year timetable established in the Second Report and Order. The Darby Study begins with an analysis of the costs of implementing broadcast HDTV. Darby Study at 4-19. In this section, the Study analyzes the admittedly speculative information now available as to the probable capital costs of constructing a broadcast HDTV facility. These preliminary studies, conducted by PBS and CBS, show that the cost of a full HDTV capability could be on the order of $10-12 million over a five-year period for the first stations to enter the market.

Indeed, merely to achieve the capability of "network pass-through" is likely to cost in the neighborhood of $1.5 million, assuming that a station can utilize its existing tower at no additional cost. In fact, a significant number of stations, particularly in the largest and most congested markets, are likely to be precluded for structural, engineering, regulatory or contractual reasons from utilizing their existing towers. This fact alone could more than double the initial figure. Achieving the additional ability merely to insert local commercials in the HDTV signal could also more than double the initial cost. Moreover, as the Darby Study emphasizes, this already sizeable investment reflects only capital costs. Depending upon the programming strategy employed by the station, HDTV operations could entail quite sizeable additional operating expenses.

The Darby Study highlights three additional features of this substantial investment. First, the investment falls with disproportionate impact on smaller market stations. Even employing very optimistic assumptions about staggered implementation and economies of productions (assumptions which are, of course, negated by the across-the-board timetable adopted in the Second Report and Order, the capital costs for smaller stations are likely to be more than half as great as those of larger stations. Yet the revenue differential between large and small stations can be as great as a hundredfold or more. Clearly, the per viewer capital costs of small stations will vastly exceed those of large stations. Darby Study at 19-27.

Second, capital costs are likely to vary substantially over time, with significant economies accruing to those who can construct later in the cycle. These economies derive not only from increased equipment production but from the ability of stations to fully depreciate their existing NTSC equipment and, where possible, to employ "fungible" equipment capable of servicing both their NTSC and HDTV operations.

Third, the risks associated with this investment are unlikely to be matched with appreciable revenues for the foreseeable future. Any such revenues, whether incremental, as in the case of a separate HDTV programming service, or "siphoned" from NTSC revenues, in the case of a fully simulcast service, will be a function of HDTV receiver penetration. As the Darby Study demonstrates, all credible HDTV receive penetration estimates show little or no HDTV viewing audience until the turn of the century or later. Darby Study at 27-32.

More broadly, the Darby Study examines the interests of various stakeholders in HDTV, and concludes that an enormous broadcast station investment in HDTV is not likely to be matched with a proportionate share of the likely return. HDTV is, first and foremost, of benefit to equipment manufacturers and program producers with substantial existing programming inventories and, somewhat less clearly, to certain types of programming such as sports and movies. For distributors, including both cable and broadcasting, whether subscription or advertiser-supported, HDTV is unlikely to corral sufficient additional market share to warrant a rapid rollout of the technology. Darby Study at 32-46.

The implications of these findings for Commission policy should be clear. Given the enormity and time sensitivity of the costs and the great uncertainty and time sensitivity of the returns in broadcast station investment, miscalculation in setting application and construction periods could well result in an implementation timetable which is unreasonably accelerated, forcing a significant number of stations, particularly in mid-sized and smaller markets, to waive their initial HDTV channel eligibility. Other stations that succeed in making the initial construction will be forced prematurely to sustain the additional capital, carrying and operating costs long before there is sufficient penetration of

HDTV receivers. Those stations who forfeit their initial eligibility will thus risk an even more substantial delay in HDTV construction or operation; those who construct could may also ultimately default on their HDTV operations and could as well jeopardize the quality of the NTSC service they provide. Those who forfeit eligibility or lose it may seek to apply later but risk being forced to utilize channels whose coverage areas have not been optimized for their locations.

The short answer to these concerns is to forego setting rigid and uniform application/construction periods at this time. There is every reason to believe that within the first two to three years after a standard is selected and channels are assigned that the Commission will have a much clearer picture of the likely costs and likely benefits of broadcast HDTV and the likely rollout of HDTV equipment and programming. That is the time to take up the question of establishing a fixed implementation timetable.

The Darby Study warrants one further observation. The MSTV Petition questioned whether the <u>Second Report and Order</u>'s implementation timetable reflected a shift in the Commission's stated objectives from preserving the local broadcast system in an HDTV environment and promoting spectrum efficiency to utilizing broadcast HDTV as an engine of industrial policy to drive HDTV receiver penetration. MSTV Petition at 7-11. Quite aside from the question of whether such an objective is an appropriate goal of the Commission, the Darby Study's stakeholder analysis strongly suggests that in doing so the Commission is pressing the wrong lever. Indeed, given the likely relative returns on their investment, broadcasters may well be the least appropriate stakeholder for the Commission to use to prime the HDTV pump. If promoting HDTV has in fact become a primary objective of the Commission's ATV proceeding, subjecting local stations to unduly accelerated implementation schedules will do nothing more than assure that they will not be viable participants in the video markets of the future.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Peggy A. Brooks, do hereby certify that on this 29th day of July, 1992, the foregoing Reply of MSTV to Comments on MSTV's Petition for Reconsideration was served by first class mail, postage prepaid to the following:

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